



**STATE OF NEW JERSEY**

***Board of Public Utilities***

*Two Gateway Center  
Newark, NJ 07102*

TELECOMMUNICATIONS

IN THE MATTER OF THE APPLICATION )  
OF TELERGY MIDATLANTIC, LLC FOR A )  
CERTIFICATE OF PUBLIC CONVENIENCE )  
AND NECESSITY TO PROVIDE LOCAL )  
EXCHANGE SERVICES AND EXCHANGE )  
ACCESS SERVICES IN NEW JERSEY )

ORDER OF APPROVAL

DOCKET NO. TE00060420

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated June 21, 2000, Telergy MidAtlantic, LLC (TMA or Petitioner) filed a petition with the Board of Public Utilities (Board) requesting authority to provide local exchange telecommunications services and exchange access services in the State of New Jersey. TMA submitted responses to a Staff questionnaire by letter dated January 22, 2001.

According to the petition, TMA is a limited liability company. TMA's parent company, Telergy Network Services, Inc. owns 51% of the economic interests while GPU Telecom Services, Inc., which is a subsidiary of GPU Inc., owns 49% of the economic interests. Petitioner was organized in the State of New York, on April 12, 2000, with its principal place of business at One Telergy Parkway, East Syracuse, New York 13057. Petition at 2. Petitioner submitted copies of its Articles of Organization, and its New Jersey Certificate of Authority to Operate as a Foreign Limited Liability Company. Id. at 2, Exhibits I and II. According to a letter dated January 22, 2001, TMA currently plans to provide the following telecommunications services in the State of New Jersey: Private Line Services (T1 and T3 Service), Integrated T1 Service, Frame Relay Service, Travel Card Service, and Outbound and Inbound Long Distance Services. TMA advised that it has long distance resale and provisional authority in Pennsylvania. Ibid. Petitioner also stated that it has not entered into an interconnection agreement with any of the ILECs.

By letter dated January 22, 2001, Petitioner requested relief from its obligations under N.J.A.C. 14:1-4.3 and 14:1-5.15(a), which require that its books and records be maintained in accordance with the Uniform System of Accounts (USOA) and within New Jersey, respectively. TMA stated that since it is a multi-state entity, it keeps its books and records in accordance with Generally Accepted Accounting Principles (GAAP). January 22, 2001 Letter at 1. In addition, for efficiency and cost saving reasons, Petitioner requested approval to maintain its books and records at its headquarters in East Syracuse, New York. Petitioner also stated it would produce its books and records if and when required by the Board. Ibid.

In its petition, TMA advised that it seeks statewide authority to provide local and long distance intrastate telecommunications services in the State of New Jersey. Id. at 1. According to the petition, TMA will initially offer service to its subscribers using the facilities of the communications networks of other facilities-based interexchange carriers (IXCs) and local

exchange telephone companies (LECs) on a resale and lease basis. TMA advised that it does not own transmission facilities in New Jersey. Petitioner advised that it would primarily target business customers within New Jersey and Pennsylvania. January 22, 2001 Letter at 1.

TMA asserted that approval of its petition would promote the public interest by increasing the level of competition in the New Jersey telecommunications market. Petition at 1. In addition, TMA asserted that customers would benefit by having alternatives from which to choose and from general improvements in price, features and options that are generated by competitive pressures. Ibid.

With regard to its managerial qualifications, TMA submitted the professional biographies of its senior management team, who, according to TMA, have both highly effective management skills and considerable telecommunications experience. Id. at 4, Exhibit IV. TMA also asserted that it possesses considerable telecommunications expertise and is well qualified to provide local exchange services in New Jersey. Ibid.

With regard to its financial qualifications, TMA asserted that it has the financial resources necessary to operate as a competitive local service provider in New Jersey. January 22, 2001 Letter at 2. In support of its financial qualifications, Petitioner submitted its Consolidated Balance Sheet and Statement of Operations of its parent, Telergy, Inc., for the third quarter of 2000. In addition, TMA enclosed copies of Telergy Inc.'s Capital Expenditure Schedule for the Board's review and requested these documents be granted proprietary and confidential status. Id. at 2. Petitioner has requested that the Board grant protective treatment for its financial information because it is a private corporation, which is not required to file public financial statements and because this information contains revenues, operating expenses and related financial and market information for TMA and its parent's operations in New Jersey. Petitioner asserted that the disclosure of the Telergy companies' financial information might result in substantial harm to the Petitioner and its parent. See Petition at 3; January 22, 2001 Letter at 2.

## DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered Sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)]

Therefore, Board approval of TMA's entry into the local exchange telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection

of services at competitive market-based prices.” N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed TMA’s petition and the information supplied in support thereof, the Board FINDS that TMA has demonstrated that it possesses the requisite financial, technical and managerial resources, which are necessary to provide local exchange and exchange access telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES TMA to provide local exchange and exchange access telecommunications service in New Jersey subject to approval of its tariffs. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board and the required pro forma financial statements required pursuant to N.J.A.C. 14:1-5.11 have been provided.

With regard to TMA’s financial information, the Board FINDS that the Petitioner has shown good cause, pursuant to N.J.A.C. 1:1-14.1, that the information contained in the pro forma financial statements of TMA, and the consolidated financial statements of Telergy, Inc. contains sensitive information which merits protection from disclosure in order to prevent competitive harm to the Petitioner. Therefore, the Board DIRECTS that the information contained in the pro forma financial statements of TMA, and the consolidated financial statements of Telergy, Inc. be kept under seal. Regarding TMA’s request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief, pursuant to N.J.A.C. 14:1-1.2(b)1 and N.J.A.C. 14:1-5.15(a), from its requirements to maintain its books and records under USOA and in New Jersey. Therefore, subject to the Petitioner’s continuing responsibility to provide its books and records to the Board upon 48 hours notice, and in the manner requested, and to pay the Board for any reasonable expenses or charges incurred by the Board for any investigation or examination of those books and records, the Board APPROVES TMA’s request for the exemptions from maintaining its books and records in New Jersey and under the USOA.

DATED: 4/27/01

BOARD OF PUBLIC UTILITIES  
BY:

(signed)  
HERBERT H. TATE  
PRESIDENT

(signed)  
FREDERICK F. BUTLER  
COMMISSIONER

(signed)  
CAROL J. MURPHY  
ACTING COMMISSIONER

ATTEST:

(signed)  
FRANCES L. SMITH  
SECRETARY